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Attorneys for *Plaintiff*, MARCO MILLA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARCO MILLA an individual,

Plaintiff,

vs.

CITY OF LOS ANGELES a municipal
entity; LOS ANGELES POLICE
DEPARTMENT, a municipal entity;
COUNTY OF LOS ANGELES,
DETECTIVE R. ULLEY AND
DETECTIVE J. VANDER HORCK, and
DOES 1 through 100, inclusive,

Defendants.

Case No. CV-00134-FWS-MRW
Hon. Judge Fred W. Slaughter
Hon. Magistrate Judge Michael R. Wilner

**PLAINTIFF MARCO MILLA'S
MOTION IN LIMINE NO. 4 TO
PRECLUDE IRRELEVANT AND
HIGHLY PREJUDICIAL MATTERS
RELATING TO ISSUES THAT ARE
NOT RELEVANT TO THE TRIABLE
ISSUE OF PROBABLE CAUSE**

Trial

Date: 05/16/2023
Time: 08:30 AM
Courtroom: 10D, Santa Ana

Pre-Trial Conference

Date: 05/05/2023
Time: 09:00 AM
Courtroom: 10D, Santa Ana

TO: ALL INTERESTED PARTIES:

PLEASE TAKE NOTICE that plaintiff hereby moves in limine to preclude any of the following evidence which is highly prejudicial and irrelevant to the triable liability issue in this case (probable cause):

1. On October 23, 2001, Los Angeles Superior Court Judge Weisman issued a search and arrest warrant for Plaintiff Marco Milla.
2. On October 24, 2001 Plaintiff Marco Milla was arrested pursuant to the search and arrest warrant.
3. On October 25, 2001 Deputy District Attorney Scott Carbaugh filed a criminal complaint charging Plaintiff Marco Milla with (1) Murder of Robert Hightower in violation of Penal Code section 187, subdivision (a), (2) Attempted murder of Steven Flowers in violation of Penal Code section 664 and section 187, subdivision (a), (3) Attempted murder of Ramar Jenkins in violation of Penal Code section 664 and section 187, subdivision (a), (4) Attempted murder of Damadre White in violation of Penal Code section 664 and section 187, subdivision (a), (5) Attempted murder of Erica Hightower in violation of Penal Code section 664 and section 187, subdivision (a), and (6) Attempted murder of Senya Williams in violation of Penal Code section 664 and section 187, subdivision (a).

1 4. On the dates of December 2, 2002, through December 23, 2002, there was a
2 criminal trial regarding the charges against Plaintiff Marco Milla. A jury found
3 him guilty of all charges.
4

5 5. On August 3, 2003 after the court denied Plaintiff Milla's motion for new trial.

6 6. That Mr. Milla was a gang member at the time of the charged offenses.
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8 This motion is based on the attached memorandum and declaration which demonstrates
9 that the only issue that should be tried according to the law and the previous 9th Circuit
10 opinions is the issue of probable cause at the time of the arrest of Plaintiff. As such, the
11 foregoing matters after the fact are irrelevant and highly prejudicial given that they
12 obviously are being used in an attempt to imply that Plaintiff was guilty of an offence
13 when, in fact, he was later found by the Los Angeles County superior court to be
14 “factually innocent.” The motion is based on FRE 402 and 403 as well as case law cited
15 in the points and authorities below.
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20 DATED: April 13, 2023

21 Respectfully submitted,
22 LAW OFFICES OF MARTIN STANLEY

23 By: /s/ Martin Stanley
24 MARTIN STANLEY, ESQ.
25 Attorneys for Plaintiff MARCO MILLA
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff hereby moves in limine to preclude any of the following evidence which is highly prejudicial and irrelevant to the triable liability issue in this case (probable cause):

1. On October 23, 2001, Los Angeles Superior Court Judge Weisman issued a search and arrest warrant for Plaintiff Marco Milla.
2. On October 24, 2001 Plaintiff Marco Milla was arrested pursuant to the search and arrest warrant.
3. On October 25, 2001 Deputy District Attorney Scott Carbaugh filed a criminal complaint charging Plaintiff Marco Milla with (1) Murder of Robert Hightower in violation of Penal Code section 187, subdivision (a), (2) Attempted murder of Steven Flowers in violation of Penal Code section 664 and section 187, subdivision (a), (3) Attempted murder of Ramar Jenkins in violation of Penal Code section 664 and section 187, subdivision (a), (4) Attempted murder of Damadre White in violation of Penal Code section 664 and section 187, subdivision (a), (5) Attempted murder of Erica Hightower in violation of Penal Code section 664 and section 187, subdivision (a), and (6) Attempted murder of Senya Williams in violation of Penal Code section 664 and section 187, subdivision (a).

- 1 4. On the dates of December 2, 2002, through December 23, 2002, there was a
2 criminal trial regarding the charges against Plaintiff Marco Milla. A jury found
3 him guilty of all charges.
4
- 5 5. On August 3, 2003 after the court denied Plaintiff Milla's motion for new trial.
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7 6. That Mr. Milla was a gang member at the time of the charged offenses.

8 **II. THE MATTERS OUTLINED ABOVE ARE HIGHLY PREJUDICIAL**
9 **AND IRRELEVANT TO THE ISSUE OF PROBABLE CAUSE AT THE**
10 **TIME OF THE ARREST, WHICH IS THE ONLY ISSUE ON**
11 **LIABILITY THAT NEEDS TO BE TRIED IN THIS CASE**
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13 The United States Court of Appeals held that Plaintiff Milla “was wrongfully
14 arrested, convicted, and incarcerated for over 12 years, 8 months, for murder and
15 attempted murder.”
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17 The United States Court of Appeals opinion held that the issues to be tried herein
18 include but are not limited to probable cause, “whether the detectives asked leading
19 questions during the witness interviews, whether the witnesses’ earlier testimony
20 contradicted later identifications, and whether the detectives failed to investigate Milla’s
21 alibi.” Further the Court of Appeals determined that “genuine issues of material fact
22 existed regarding [Milla’s] identifications” including, but not limited to “whether the
23 witnesses in this case had an opportunity to observe the crime or were too distracted;
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1 whether the witnesses gave a detailed, accurate description; and whether the witnesses
2 were under pressure from [government] officials or others.”

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4 As the 9th Circuit Stated:

5 “There were genuine issues of material fact regarding whether the detectives
6 gave the prosecutor misleading or incomplete information regarding the photo
7 identifications of Milla—the only evidence tying Milla to the shooting—and
8 regarding Milla’s alibi. The presumption of prosecutorial independence will
9 be considered rebutted in circumstances including where the detectives
10 “knowingly provided misinformation to [the prosecutor], concealed
11 exculpatory evidence, or otherwise engaged in wrongful or bad faith conduct
12 that was actively instrumental in causing the initiation of legal proceedings.”

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16 Awabdy, 368 F.3d at 1067.

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18 Taking the facts in the light most favorable to Milla, the circumstances
19 surrounding what the detectives did or did not communicate to the prosecutor
20 about Ramar Jenkins’s identification, the photo lineups, and Milla’s alibi are
21 questions that must go to a jury. A reasonable juror could find that Milla had
22 rebutted the presumption where the detectives told the prosecutor that Jenkins
23 positively identified Milla without informing the prosecutor that the interview
24 was re-taped, that the second interview was a set of highly leading questions,
25 and that Jenkins had already been shown Milla’s photo as part of an array on
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1 a previous occasion and had not identified Milla. It is a closer call whether the
2 detectives' representation of Milla's alibi—failing to specifically mention that
3 both Milla and Alex Velarde said they were together at Milla's girlfriend's
4 apartment or that the detectives had not yet interviewed the other alibi
5 witnesses or otherwise investigated Milla's alibi—would, on its own, be
6 sufficient to rebut the presumption of prosecutorial independence; however,
7 in conjunction with the representations and/or omissions regarding the photo
8 identifications, it further highlights why these questions must go to a jury . . .
9 The fact that the detectives brought hundreds of pages of materials to their
10 meeting with the prosecutor, among which details of the photo identifications
11 and alibi might have been discoverable, is beside the point—there was nothing
12 in the record suggesting that the prosecutor actually reviewed the written
13 materials during what was a verbal presentation by the detectives or
14 afterwards, before making the decision to charge Milla. Neither can the
15 detectives' lack of memory prevent Milla from surviving summary judgment
16 where he put forward other evidence to create genuine disputes of material
17 fact and where a reasonable juror could consider the entirety of the record and
18 conclude that the detectives acted recklessly or maliciously in their
19 representations or lack thereof to the prosecutor.”
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1 A motion in limine can be used to ask the court to exercise its discretion
 2 under FRE 403 to exclude photographs, physical evidence, or other materials whose
 3 “probative value is substantially outweighed” by the danger of undue prejudice,
 4 confusing the issues, misleading the jury, or an undue consumption of time. [FRE 403]
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6 If the inference to be drawn from the evidence is the result of speculation or
 7 conjecture, the underlying evidence is not relevant. [See *Engstrand v. Pioneer Hi-Bred*
 8 *Int’l, Inc.* (SD IA 1996) 946 F.Supp. 1390, 1396, aff’d (8th Cir. 1997) 112 F3d
 9 513; *American Cancer Soc. v. Cook* (5th Cir. 2012) 675 F3d 524, 528-529—allegations
 10 in affidavit too conclusory and factually bare to support claims. The following matters are
 11 irrelevant and highly prejudicial:
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 13

- 14 1. “On October 23, 2001, Los Angeles Superior Court Judge Weisman issued a
 15 search and arrest warrant for Plaintiff Marco Milla.”
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17 The defense obviously would like to have the jury hear that a judge issued an arrest
 18 warrant to put forth a false implication that he committed a bad act- but the only issue
 19 is whether the officers had probable cause and if they somehow concealed, made up or
 20 led Ramar Jenkins into his identification, then whether the judge issued a warrant or
 21 not is irrelevant and again highly prejudicial.
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- 24 2. “On October 24, 2001 Plaintiff Marco Milla was arrested pursuant to the
 25 search and arrest warrant.”
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1 Again, the fact of the arrest is relevant but whether he was arrested pursuant to search
2 warrant is absolutely irrelevant and another highly prejudicial fact the defense would
3 use to attempt to imply wrongdoing on Milla's part when in fact there was absolutely
4 no wrongdoing.
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- 6 3. "On October 25, 2001 Deputy District Attorney Scott Carbaugh filed a
7 criminal complaint charging Plaintiff Marco Milla with (1) Murder of Robert
8 Hightower in violation of Penal Code section 187, subdivision (a), (2)
9 Attempted murder of Steven Flowers in violation of Penal Code section 664
10 and section 187, subdivision (a), (3) Attempted murder of Ramar Jenkins in
11 violation of Penal Code section 664 and section 187, subdivision (a), (4)
12 Attempted murder of Damadre White in violation of Penal Code section 664
13 and section 187, subdivision (a), (5) Attempted murder of Erica Hightower in
14 violation of Penal Code section 664 and section 187, subdivision (a), and (6)
15 Attempted murder of Senya Williams in violation of Penal Code section 664
16 and section 187, subdivision (a)."

17 Again, the fact of the charge is relevant but whether a deputy district attorney filed it or
18 not is irrelevant – the only relevant issue is, as the 9th Circuit stated, whether true and
19 full and accurate information was presented to that deputy district attorney.
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1 4. "On the dates of December 2, 2002, through December 23, 2002, there was a
2 criminal trial regarding the charges against Plaintiff Marco Milla. A jury
3 found him guilty of all charges."

4
5 5. "On August 3, 2003 after the court denied Plaintiff Milla's motion for new
6 trial."

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8 With regards to items 4 and 5 above, again these matters are highly prejudicial and
9 irrelevant for the same reasons as are 1-3 above.

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11 6. That Mr. Milla was a gang member at the time of the offense.
12 Whether Milla was a gang member at the time of the arrest has nothing to do with
13 probable cause and is undoubtedly extremely prejudicial. Further, whether Milla was a
14 gang member or not has nothing to do with whether there was probable cause because
15 the defendants have testified that the only "fact" that gave them probable cause was the
16 identification by Ramar Jenkins (see Exhibit 1 hereto) and, as such, that is the only
17 issue that should be tried.
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22 DATED: April 13, 2023

Respectfully submitted,
LAW OFFICES OF MARTIN STANLEY

24 By: /s/ Martin Stanley
25 MARTIN STANLEY, ESQ.
26 Attorneys for Plaintiff MARCO MILLA
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DECLARATION OF MARTIN STANLEY

I, MARTIN STANLEY, declare:

1. I am an attorney duly licensed to practice law in this Court, attorney of record for Plaintiff MARCO MILLA. The facts herein are of my own personal knowledge, and if sworn I could and would competently testify thereto.
2. Plaintiff hereby moves in limine to preclude any of the following evidence which is highly prejudicial and irrelevant to the triable liability issue in this case (probable cause):
3. On October 23, 2001, Los Angeles Superior Court Judge Weisman issued a search and arrest warrant for Plaintiff Marco Milla.
4. On October 24, 2001 Plaintiff Marco Milla was arrested pursuant to the search and arrest warrant.
5. On October 25, 2001 Deputy District Attorney Scott Carbaugh filed a criminal complaint charging Plaintiff Marco Milla with (1) Murder of Robert Hightower in violation of Penal Code section 187, subdivision (a), (2) Attempted murder of Steven Flowers in violation of Penal Code section 664 and section 187, subdivision (a), (3) Attempted murder of Ramar Jenkins in violation of Penal Code section 664 and section 187, subdivision (a), (4) Attempted murder of Damadre White in violation of Penal Code section 664 and section 187, subdivision (a), (5) Attempted murder of Erica Hightower in violation of Penal

1 Code section 664 and section 187, subdivision (a), and (6) Attempted murder of
2 Senya Williams in violation of Penal Code section 664 and section 187,
3 subdivision (a).
4

5 6. On the dates of December 2, 2002, through December 23, 2002, there was a
6 criminal trial regarding the charges against Plaintiff Marco Milla. A jury found
7 him guilty of all charges.
8

9 7. On August 3, 2003 after the court denied Plaintiff Milla's motion for new trial.
10

11 8. That Mr. Milla was a gang member at the time of the offense.

12 9. This motion is based on the attached memorandum and declaration which
13 demonstrates that the only issue that should be tried according the law and the
14 previous 9th Circuit opinions is the issue of probable cause at the time of the arrest
15 of Plaintiff. As such, the foregoing matters after the fact are irrelevant and highly
16 prejudicial given that they obviously are being used in an attempt to imply that
17 Plaintiff was guilty of an offence when, in fact, he was later found by the Los
18 Angeles County superior court to be “factually innocent.” Further, whether Milla
19 was a gang member or not has nothing to do with whether there was probable
20 cause because the defendants have testified that the only “fact” that gave them
21 probable cause was the identification by Ramar Jenkins (see Exhibit 1 hereto) and,
22 as such, that is the only issue that should be tried.
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1 10. Finally, counsel have thoroughly met and conferred on this issue. Besides
2 discussing this issue with defense counsel, among other things, on April 11, 2023,
3 2 days prior to filing, plaintiff's counsel emailed this motion in limine to defense
4 counsel asking that he review it and respond as to whether he would agree to it or
5 not.
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9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct and that this declaration was executed on April 13, 2023, at
11 Santa Monica, California.
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16 By: /s/ MARTIN STANLEY
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EXHIBIT 1

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1 A I have no idea because I wasn't able to -- to
2 prove that one way or another.

3 Q Okay. Now, how did you know that the
4 witnesses that ID'd Mr. Milla tentatively were being
5 honest or not?

6 A They were interviewed extensively, and I
7 believed that they were all honest. And tentatives
8 were strong tentatives to me, but they were
9 tentatives.

10 Q And is a tentative sufficient for probable
11 cause -- or let me ask you this: Back then when you
12 were doing this job, did you believe tentative IDs
13 were sufficient for probable cause?

14 MR. MILLER: Objection. Vague, ambiguous,
15 incomplete hypothetical, calls for a legal conclusion,
16 his state of mind is irrelevant.

17 BY MR. STANLEY:

18 Q Go ahead.

19 A I agree with that answer.

20 MR. MILLER: It wasn't an answer. It's an
21 objection.

22 MR. BARRETT: Yes, it was.

23 THE WITNESS: Okay. Read it back to me
24 again, because I want to be sure it's correct, my
25 answer.

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1 (Record read.)

2 THE WITNESS: No.

3 BY MR. STANLEY:

4 Q Now, it says here, "Velarde replied he didn't
5 know how Milla could be in two different places at the
6 same time."

7 Do you see that?

8 A I see that.

9 Q And did you do any further investigation with
10 regards to that question -- or that statement?

11 A Tried.

12 Q What did you do?

13 A Continued to try to corroborate all of his
14 alibi.

15 Q And how did you do that?

16 A Well, we tried to get ahold of Sandra. We
17 made phone calls. She made an appointment. She broke
18 them. When we finally got ahold of her roommate, she
19 said she moved out, and we -- and we had no
20 forwarding. We had no information on her.

21 So then when we tried to call her phone
22 again, the phone said, "Not accepting any more calls."
23 I believe I made that phone call, because that's why
24 I remember that one. And reading this, that brought
25 that back.

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1 in the world, as we say, so that doesn't matter.

2 Have you ever heard the word -- the name
3 Juan Pimental?

4 MR. MILLER: From anybody other than your
5 attorney.

6 BY MR. STANLEY:

7 Q Well, that's automatic.

8 A No.

9 Q Okay. How about Julio Munoz?

10 A Not that I recall.

11 Q Did you ever investigate whether Julio Munoz
12 was a potential suspect in this case?

13 A At this point in time I don't recall.

14 Q Did you ever investigate that -- any other
15 person as a suspect in this case whose name you can
16 give us?

17 A I believe there was one other potential that
18 my partner was involved in. I can't remember what the
19 name was. I'm not --

20 Q Was that a Mr. Martinez?

21 A Yeah. I knew it started with an "M."

22 Q Okay. Anyone other than him and Mr. Milla?

23 A Not to my knowledge at this time.

24 Q Now, going back to Exhibit 34 for one quick
25 second, that date when Mr. Jenkins first made the

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1 identification was 10/22/01, true, according to the
2 top right-hand corner?

3 A 13 is 1 o'clock.

4 Q 10/22/01.

5 A Oh, I'm sorry.

6 Q It's all good.

7 A Maybe I do need a break.

8 Q It's all right.

9 A 10/22/01, yes.

10 Q Okay. And prior to that time, had anyone
11 positively identified Mr. Milla?

12 A At this time I can't -- I can't answer that.

13 Q And did anyone other than Mr. Jenkins ever
14 positively identify Mr. Milla?

15 MR. MILLER: Objection. Vague, overbroad,
16 may lack foundation as to this witness.

17 MR. STANLEY: Well, if he doesn't know, then
18 he doesn't know.

19 Q I'm only asking about your personal
20 knowledge.

21 Did anyone ever positively identify
22 Mr. Milla, that you know of, other than Mr. Jenkins
23 perhaps doing so at this particular time?

24 A Positively?

25 Q Yes.

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1 A To my knowledge, at this time I don't recall.

2 Q Okay. Thank you. You can give that back to
3 the court reporter.

4 MR. STANLEY: Let's take a two-minute break
5 because I want to try to see if there's a possibility
6 of being done before lunch. So we're going to take a
7 two-minute break and we're going to talk about it.

8 MR. MILLER: Sure.

9 THE VIDEOGRAPHER: The time is 1:11 p.m.
10 We're off the record.

11 (Recess.)

12 THE VIDEOGRAPHER: The time is 1:17 p.m.
13 We're on the record.

14 BY MR. STANLEY:

15 Q Okay. I'm showing you Exhibit Number 37.
16 It's a "Tape Recording Log."

17 (Exhibit 37 marked.)

18 BY MR. STANLEY:

19 Q Do you see that?

20 A Yes.

21 Q And these are the tapes that were prepared in
22 this case; right?

23 A These are the tapes and numbers of the people
24 that were interviewed and the date and times. But
25 whether it was prepared for this case, I don't know.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 100 Wilshire Blvd, Suite 700, Santa Monica, California 90401.

On **April 13, 2023**, I served the foregoing document(s) on the interested parties in this action by email as follows:

Attorney for Defendants:

KEVIN GILBERT

Email: kgilbert@ohhlegal.com

BY ELECTRONIC DELIVERY DUE TO COVID-19

☒ STATE: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 13, 2023**, at Santa Monica, California

/s/ MARTIN STANLEY

Martin Stanley